Supreme Court, U.S.
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No. 90-209

In The

Supreme Court of the United States

October Term, 1990

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

IGNACIO CAMBRAX SALGADO,

Respondent.

Petition for Writ Of Certiorari To The Court Of Appeal of California, Fourth Appellate District, Division Three

BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

I

AN INDIVIDUAL WHO RUNS FROM POLICE OFFICERS MAY BE SEIZED WITHIN THE MEANING OF THE FOURTH AMENDMENT AT A TIME PRIOR TO THE OFFICERS' GAINING PHYSICAL CONTROL OVER HIM OR ARRIVING IN HIS IMMEDIATE PRESENCE

Michigan v. Chesternut, 486 U.S. 567, 100 L.Ed.2d 565 (1988) at 571 states the dilemma:

> Petitioner (People of the State of Michigan) argues that the Fourth Amendment is never implicated until an individual stops in response to the Police's show of authority. Thus, petitioner would have us rule that a lack of objective and particularized suspicion would not poison police conduct, no matter how coercive, as long as the police did not succeed in actually apprehending the individual. Respondent contends, in sharp contrast, that any and all police "chases" are Fourth Amendment Seizures. Respondent would have us rule that the police may never pursue an individual absent a particular rise an objective basis for suspecting that he is engaged in criminal activity. (references to parties added)

In the present case, Petitioner requests that clarification is required by this court in order to determine properly those cases that lie between these two extremes as expressed in *CHESTERNUT*. It is precisely between these two extremes that our present case falls, in that often frenzied realm of "hot pursuit". Respondent disagrees that further clarification is needed as to fact situations that fall between an actual physical detention and a "chase". Respondent suggests that this Honorable Court

has given adequate guidance to resolve such Fourth Amendment issues.

Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968), stated:

> Obviously, not all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred (Emphasis added).

Grappling with the notion as stated in *TERRY* that a "seizure" has occurred when a citizen has been *restrained in some way* the court in *United States v. Mendenhall*, 446 U.S. 544 (1980) stated:

> A person has been "seized" within the meaning of the Fourth Amendment only if, in view of all the circumstance surrounding the incident, a reasonable person would have believed that he was not free to leave. *Id.* at 554.

Further, *Michigan v. Chesternut*, 486 U.S. 567, 100 L.Ed.2d 565 (1988), while dealing with investigator pursuits, follows the *MENDENHALL* view of fixing a test that is flexible enough to apply to situations that fall in between the enunciated extremes. The *CHESTERNUT* court followed the reasoning behind the *MENDENHALL* notion of "viewing all the circumstances surrounding a given incident":

> The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation. Moreover, what constitutes a restraint on liberty prompting a person to conclude that he is not

> free to "leave" will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs. (*Chesternut, supra,* at 100 L.Ed.2d 572)

It appears that by way of the *CHESTERNUT* case the court is prescribing the test to determine what degree of restraint is necessary to implicate Fourth Amendment protections on balance with the degree of coerciveness of the police conduct.

The Statement of the Case as put forth by the Petitioner while correct, omits the flavor of the incident itself, that is, it does not adequately describe the coerciveness of the police conduct which resulted in a restraining effect and ultimately a physical detention of the defendant. It is important to note that while Officer Hernandez was chasing Salgado and Officer Anderson made an open broadcast call stating that Hernandez was in foot pursuit and giving a description of the defendant, that he was aware that Deputy Chance and Deputy Hopp were in the area as all the deputies had been summoned there on an unrelated call. (R.T. 3-4, 24-25, 41). It is clear that at this point Deputy Anderson intended to have the defendant detained. Officers Hopp and Chance received the broadcast and began scouring the area for Salgado and within a minute or two the defendant was detained by Officer Chance. At the time the defendant was physically detained, *none of the Deputies knew the reason for his detention.* It is was only after Deputy Hernandez read to defendant his Miranda rights that he and Officer Hopp went in search of contraband (R.T. 48).

This web of detention that Deputy Anderson began to weave around the defendant, Respondent submits, was

extremely coercive given the fact that the objective facts upon which the detention was initiated were minimal at best. That is to say, that, no criminal activity on the part of Salgado was suspected until he began to run. It is true that he was seen with an individual known to the Deputies as one involved in criminal activity however, there was nothing about their meeting other than the fact that it was a high crime area that led officers to believe that criminal activity was taking place.

II

WHETHER UNPROVOKED FLIGHT FROM POLICE OFFICERS COUPLED WITH NO OR VERY MINIMAL PRIOR SUSPICIOUS CIRCUMSTANCES PROVIDES GROUNDS UNDER THE FOURTH AMENDMENT FOR POLICE TO CONDUCT A STOP

In the present case there was no suspicion of criminal activity on the part of the defendant until he ran. Does running per se provide reasonable suspicion and objective facts upon which to initiate a detention? Given the tests advanced by *MENDENHALL* and *CHESTERNUT* the answer would seem to be; No. In viewing all the circumstances surrounding the incident the mere fact of running would necessarily only be a factor to consider.

Petitioner suggests that the "running" was bolstered by other suspicious circumstances, i.e., high crime area and the defendant conversing, along with others, with a known narcotics dealer. Therefore, Petitioner reasons, there were adequate facts upon which to detain. However, applying the flexible test of *MENDENHALL* and *CHESTERNUT* and further elaborated in *U.S. v. Sokolow*, 490 U.S. ___, 104 L.Ed.2d 10 (1989) as the "Totality of

Circumstances" test, the opposite would be so. Any significance an officer may accord to an unprovoked flight would not be in a vacuum but rather would be considered as another factor in light of all of the surrounding circumstances balancing the degree of reasonable suspicion and objective facts with the conduct of the police.

CONCLUSION

This Court is presented with a fact situation which contains little or no objective facts from which to base a reasonable decision to initiate a "Hot-Pursuit" detention. This Court, Respondent respectfully submits, has given sufficient guidance, by way of a flexible test, to determine if the Fourth Amendment should be implicated. This Court has already set the boundaries and parameters by which to decide the varying factual situations as they arise.

Accordingly, Respondent respectfully requests this Honorable Court to deny the Petition for Certiorari.

Dated: February 1, 1991

Respectfully submitted by,

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